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The Commonwealth of Massachusetts
Executive Office of Public Safety
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Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

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VICE CHAIR

Docket # 2006-181
35 Solomon Pond Road
Northborough, MA

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the Northborough Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned by Solomon Pond Realty Trust which houses an establishment operated under the name of Guiseppe's Grille, a private, for profit establishment. Mr. Kevin Kieler, hereinafter referred to as the Appellant, is the sole representative of the trust. He indicated that he was also representing said establishment, which is operated by his sister. The building, which is the subject of the order, is located at 35 Solomon Pond Road, Northborough, MA.

B) Procedural History

By written notice received by the Appellant on August 31, 2006, the Northborough Fire Department issued an Order of Notice informing him about the provisions of a new law, M.G.L. c. 148, s. 26G½, and requiring the installation of an adequate system of automatic sprinklers in said subject building. The Appellant filed an appeal of said order on October 10, 2006. The Board held a hearing relative to this appeal on April 11, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing at the hearing was Kevin Kieler, representative of the Solomon Pond Realty Trust. Chief David M. Durgin appeared on behalf of the Northborough Fire Department and Town Building Inspector William S. Farnsworth, Jr. also appeared.

Present for the Board were: Maurice M. Pilette, Chairman, State Fire Marshal Stephen D. Coan, Chief Thomas Coulombe, Alexander MacLeod, Peter Gibbons, Aime DeNault, and George A. Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Northborough Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

D) Evidence Received

1. Application for Appeal by Appellant
2. Letter and Statement in Support of Appeal
3. Order of Notice of the Northborough Fire Department
4. Certificate of Inspection (dated 12/1/2005)
5. Notice of Pre-Hearing Status Conference to Appellant
6. Notice of Pre-Hearing Status Conference to the Northborough Fire Dept.
7. Letter to the Board from Appellant
8. Notice of Hearing to Appellant
9. Notice of Hearing to the Northborough Fire Dept.
- 10A. Summary
- 10B. Letter to Appellant from Mr. Farnsworth
- 10C. Temporary Certificate of Inspection
- 10D. Common Victualer's License
- 10E. Photos (1-12)
11. Floor Plan (bar area)
12. Floor Plan (seating chart – whole facility)
- 13A. Copy of M.G.L. c. 148 § 26G½
- 13B. Memorandum from Board of Selectman to Chief Durgin
- 13C. Alcohol License
- 13D. Entertainment License
- 13E. Property Card
- 13F. Entertainment List
- 13G. Menu

E) Subsidiary Findings of Fact

- 1) By Notice dated August 31, 2006, the Northborough Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 35 Solomon Pond Road, Northborough, MA in accordance with the provisions of M.G.L. c. 148, s. 26G½. This building is occupied by Guiseppe's Grille, a private, for profit establishment.
- 2) According to the building's Certificate of Inspection, issued December 1, 2005, the establishment has a capacity of 245 persons throughout the restaurant, lounge, and deck and was classified as an A-3 occupancy. According to the most recent Certificate of Inspection issued January 1, 2007, the establishment has a capacity of 58 persons in the bar/lounge, 88 persons in the main dining room, 40 persons in function room A and 80 persons in function

room B for a total occupancy of 266. Said certificate indicates that the occupancy classification is now "A-2."

- 3) The Appellant contends that the establishment is principally used, advertised and held out as a family style restaurant and is therefore exempt from the sprinkler provisions of M.G.L. c.148, s. 26G½. The establishment serves meals on a daily basis. The "bar area" is also used for restaurant seating. However, a customer can patronize this area for the purchase of liquor only. The bar area can prevent the expansion of activities into the dining area since both rooms are separated by a wall and a door, which is capable of closing. The two function hall areas are used as restaurant seating and as function halls for meetings, seminars, and other private functions such as bridal showers, christening parties, communion parties. The greater majority of these events feature a meal as the primary attraction and usually do not feature music or dancing. There was testimony that music, in the form of a disc jockey, does occur occasionally in the function rooms. On most occasions these events occur in separate function rooms. Sometimes, the function rooms are combined for certain events. The Appellant testified that cocktail waitresses service the two function halls on most occasions during private events. There was testimony indicating that patrons attending private functions are able to leave function areas to purchase drinks at the bar. The Appellant indicated that on occasion a portable service bar has been employed in the larger function area and that using portable bars is an option, if necessary, to maintain an operational separation between the function areas.
- 4) The facility routinely provides live music on Friday and Saturday nights, typically limited to a guitarist and singer. The Appellant testified that the music is provided as a courtesy to patrons waiting to be seated for dinner. No entertainment is allowed on the outer deck area. The Appellant indicated that there was no raised platform or stage for performing and no area designated for dancing. The club does hold an entertainment license.
- 5) Full meals are routinely served in the "bar" area at the same time meals are served in the dining area. The facility holds a full liquor license that allows the facility to remain open from 11:00 a.m. to 1:00 a.m. Monday through Saturday and on Sundays from 12:00 p.m. to 1 a.m. The Appellant also indicated that the kitchen closes between 11:30 p.m. and 12:00 a.m. and that the entire facility is closed no later than 12:30 a.m.
- 6) The Fire Department issued the Order to install sprinklers based upon the overall building capacity, the presence of a full alcohol license, and the existence of dance and entertainment licenses.
- 7) The representative of the Fire Department testified that despite the Appellant's assertion that the bar area was physically and operationally separate from the rest of the facility by a glass door, during several recent inspections, the door was observed to be open, allowing a free flow of people from other areas of the facility to the bar. The Chief also noted that one of the function rooms had a raised area that could be used for dancing purposes.
- 8) Chief Durgin also testified that during one visit to the facility, the sound levels coming from the facility were well above normal sound levels to the point that he could hear the music from outside in the parking lot.

- 9) The Fire Chief also voiced concerns that the set-up and location of the guitarist and singer were, on occasion, obstructing reasonable egress.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2d paragraph of M.G.L. c. 148, s. 26G½, in pertinent part, states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation, in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated 1-10-05, this Board issued interpretive guidance relative to the provisions of this new law found in c.148, s. 26G½. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:
- a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and
 - h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s. 26G½. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon

the unique characteristics of the building at the discretion of the head of the fire department.

- 4) This establishment has many characteristics that are typical of a restaurant. It appears that currently the service of food is the primary customer attraction, particularly in that portion of the building considered the dining area. The mandatory sprinkler requirements do not apply to a place of assembly within a building or structure or portions thereof used “principally as a restaurant”. Such restaurant establishments feature meals as the main or principal customer attraction. However, it appears that this particular establishment features a portion of the building that could also be considered a “bar” or lounge area used and designed to serve alcoholic beverages to customers. This area also routinely features, on a regular basis, live entertainment consisting of a singer and guitar musician that provides musical entertainment for lounge patrons and for those waiting to be seated. This establishment holds a license for such entertainment. This type of establishment, which features combined characteristics of a restaurant, bar and function facility are fairly common throughout the Commonwealth, yet present unique challenges in implementing the provisions of section 2G½. In an attempt to interpret the legislative intent of this law as applied to such establishments, the board will look to the plain language of the statute in rendering a determination. The Board notes that section 26G½, in pertinent part, requires the installation of an adequate system of automatic sprinklers in: “Every ... building or structure ... or **portions thereof**, of public assembly **with a capacity of 100 persons or more** that is designed or used for occupancy as a ... nightclub, dancehall discotheque, bar or similar entertainment purposes...”. In determining whether the sprinkler requirement will apply in this case and other similar cases that involve a building, which features a combination of characteristics, the legislature’s use of the words “portions thereof” in describing the areas of the building subject to the sprinkler installation is significant. This language clearly requires an analysis of the building’s characteristics and floor plan to determine if a reasonable separation exists between that portion of the building used or designed for bar or entertainment purposes and the other portion of the building not subject to the law. In determining if a sprinkler system is required in such “combination” establishments the Board will conduct the following two-part analysis:
1. Is that portion of the building used or designed for bar or entertainment purpose reasonably apportioned and separate from the other areas of the building? In determining this question there must be a sufficient physical separation that exists between the entertainment or bar portion from the rest of the building, which prevents the occupants or activities of the bar to expand into the dining area. Such separation can include a permanent wall or closed door. Additionally, there must be a separation in an operational or business context that exists which assures that the activities that occur in the bar or entertainment area do not overflow or expand into the restaurant or other areas when such areas are no longer in operation.
 2. If the separation exists, as described in question #1, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?
- 5) The above analysis, applied to this particular establishment indicates the existence a physical

separation between the bar area and the rest of the building which prevents the activities relating to the bar to expand into the dining area. This separation includes a permanent wall with a door that is capable of closing. The bar area also has a separate and independent means of egress. Additionally, there was testimony that a separation in an operational and business context exists which assures that the activities that occur in the bar area do not overflow or expand into the restaurant or other areas when they are shut down. The portion of the building used as a bar has capacity of 58 persons, as indicated in the current certificate of inspection. This amount is less than the statutory capacity of 100 persons or more, which would require the installation of sprinklers in this bar area.

- 6) With respect to the rooms described as function rooms A and B, the board finds that sufficient physical separation exists between the rooms and that each room has a listed capacity of less than 100 persons. Additionally, there was testimony indicating that the management has both the ability and the willingness to maintain operational separation between said rooms and the other portions of the facility when events occur that feature music for entertainment and dancing purposes. There was testimony, which indicated that these function rooms, particularly the larger room, does occasionally employ a portable service bar for functions independently from the lounge area.
- 7) The Board notes that this establishment for the past years, including the year 2006, was classified as an “A-3” use group classification, which is typical of the use group assigned to restaurants. Very recently this establishment was assigned a use group “A-2” which is typical of an establishment that features bar or nightclub activities. However, at the time the A-2 use group was established by the town-building department, the department also assigned separate capacity limits for the various portions or areas of the facility.

G) Decision and Order

This Board unanimously **reverses** the Order of the Northborough Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½. However, this determination is conditioned upon the following terms:

1. The management shall maintain both physical and operational separation, as described herein, between the lounge area, dining areas and the function rooms to assure that the activities and established occupant capacity remain segregated.
2. During functions where liquor is served, the management shall provide a separate function bar for the function room in order to assure that attendees of the functions do not flow into the lounge area or other areas to acquire beverages, thus creating the potential for an overcrowding situation in the lounge area.
3. The management shall not combine the two function rooms A and B for events that feature any form of entertainment or dancing. Such a situation would create an area that features “A-2 like” activities in a portion of the building with a combined capacity in excess of 99 persons. The only exception to this condition is for an event held pursuant to a temporary use permit issued by the head of the fire department in

accordance with the provisions of M.G.L. c. 148, s. 26G½, 4th paragraph.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Stephen D. Coan, State Fire Marshal	In Favor
Thomas Coulombe	In Favor
Alexander Macleod	In Favor
Peter Gibbons	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E.. Chairman
Chairperson

Dated: June 27, 2007

A COPY OF THIS DECISION AND ORDER WAS FORWARDED VIA CERTIFIED MAIL, RETURN RECEIPT TO:

Kevin Kieler
Guiseppe's Grille
35 Solomon Pond Road
Northborough, Massachusetts 01532

Chief David M. Durgin
Northborough Fire Department
11 Pierce Street
Northborough, Massachusetts 01532-1907